

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
MAY 15 2006

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CITY OF LIVONIA EMPLOYEES'  
RETIREMENT SYSTEM, on behalf of  
itself and all others similarly situated and  
derivatively on behalf of  
NORTHWESTERN CORPORATION,  
d/b/a NORTHWESTERN ENERGY,

Plaintiff,

-and-

HARBINGER CAPITAL PARTNERS  
MASTER FUND I, LTD.,

Plaintiff-Intervenor,

-vs-

MICHAEL J. HANSON; E. LINN  
DRAPER, JR.; STEPHEN P. ADKI;  
JON S. FOSSEL; JULIA L. JOHNSON;  
PHILLIP L. MASLOWE; and  
D. LOUIS PEOPLES,

Defendants,

and

NORTHWESTERN CORPORATION,  
d/b/a NORTHWESTERN ENERGY, a  
Delaware corporation,

Nominal Defendant.

CIV 05-4178

ORDER DISMISSING  
PLAINTIFF-INTERVENOR'S  
COMPLAINT

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Plaintiff-Intervenor, Harbinger Capital Partners Master Fund I, Ltd. ("Harbinger") and  
Defendants entered into a stipulation to dismiss Harbinger's complaint without prejudice in light of

changed circumstances. (Doc. 338.) Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Harbinger's complaint will be dismissed without prejudice.

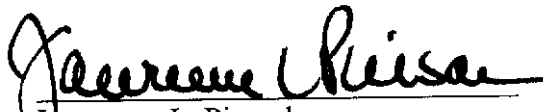
Harbinger filed a Motion to Compel Defendants' Return of Inadvertently Produced Documents, Doc. 267. The three e-mails at issue were provided to the Court and the motion will be granted. Harbinger also filed a Motion to Compel, Doc. 318, requesting that the Court enter an order compelling Defendants to produce documents responsive to Harbinger's Request for Production of Documents. This motion will be denied as moot in light of the dismissal of Harbinger's complaint. Accordingly,

IT IS ORDERED:

1. That the Motion to Dismiss, Doc. 338, is granted and Harbinger's Intervenor Complaint, Doc. 165, is dismissed without prejudice.
2. That Harbinger's Motion to Compel Defendants' Return of Inadvertently Produced Documents, Doc. 267, is granted. Defendants shall promptly return to Harbinger the documents referred to in Harbinger's memorandum, Doc. 268, and destroy any copies Defendants may possess. Defendants shall also inform the Clerk of Court which documents contain e-mails discussing and characterizing the content of the inadvertently produced documents and those documents shall be sealed by the Clerk of Court. Defendants shall file redacted versions of any such documents with the Clerk of Court.
3. That Harbinger's Motion to Compel, Doc. 318, is denied as moot.

Dated this 15<sup>th</sup> day of May, 2006.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
DEPUTY